

Application Serial No. 10/619,721
Amendment dated October 5, 2009
Reply to final office action of August 5, 2009

REMARKS

Claims 1-52 are pending in the instant application. Of these, claims 14, 18, 32, 36 and 41-46 are withdrawn. Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are under consideration, and stand rejected as final. Applicant respectfully requests reconsideration in view of the following remarks.

Claim Rejections – 35 USC §102

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,920,203 to Tang et al. (hereinafter referred to as “Tang”). Applicant respectfully traverses this rejection.

The Action characterizes Tang as “including a resorbable, implantable biopolymer fixation device that can be fastened to tissue (see, e.g., Summary of the Invention; col. 7, lines 24-43; col. 8, lines 65-col. 9, line 2; col. 20, lines 41-62; col. 37, lines 67-68; col. 38, lines 9-10). The device is made of one or more layers of a porous material and can comprise an additional material in the form of various fillers and additives and active agents (id.).”

Applicant respectfully submits that Tang neither expressly nor implicitly discloses the invention of independent claim 1 and its dependents featuring

wherein at least at room temperature said porous body inherently possesses the property of being smoothly bent upon being subjected to a bending force, said bending force at least partially but irreversibly collapsing a portion of the pores to form a radius curve, whereby said porous body (a) inherently maintains said radius curve upon removal of the bending force.

In other words, the claimed porous body itself is able to maintain the smoothly bent condition. In contrast, the Tang device requires an external actor such as sutures to maintain the radius curve that was formed by the bending force that irreversibly collapsed a portion of the pores of the device. That is, absent the externalities such as sutures, the porous body of Tang cannot maintain the formed radius curve by itself, which is the meaning of “inherent”. Thus, the porous body of Tang is not capable of exhibiting the claim 1 properties.

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Moreover, Applicant respectfully submits that Tang neither expressly nor implicitly discloses the invention of independent claim 19 and its dependents featuring

wherein at least at room temperature said porous body intrinsically possesses the characteristics of being capable of being smoothly bent upon exposure to a bending force, said bending collapsing a portion of the pores to form a radius curve, whereby said porous body maintains said radius curve upon removal of the bending force.

In essence, the claimed porous body *itself* is able to maintain the smoothly bent condition. In contrast, the Tang device featuring one or more layers of porous material requires an external actor such as sutures to maintain the radius curve that was formed by the bending force that collapsed a portion of the pores of the device. That is, the porous body of Tang does not exhibit this feature by itself, which is the meaning of "intrinsic". Thus, the Tang porous body does not intrinsically possess the claim 19 properties.

Still further, Applicant respectfully submits that Tang neither expressly nor implicitly discloses the invention of independent claim 51 and its dependents featuring

wherein at least at room temperature said porous body inherently possesses the properties of: at least one of the zones is less able to withstand compressive force than at least one other zone such that the porous body can be compressed against an irregular surface, whereupon less than all of the pores collapse, said collapse not being reversible by said porous body, wherein the device conforms to the irregular shape, wherein the device continues indefinitely to conform to the irregular shape after the compressive force is removed

To simplify, the claimed porous body itself is able to maintain a new shape following compression of the body against an irregularly shaped surface. In contrast, the Tang device requires an external actor such as sutures to continue to indefinitely conform to the irregular shape. That is, the Tang device featuring one or more layers of porous material does not exhibit this feature or property *by itself*, the meaning of "inherent". Thus, the porous body of Tang does not inherently possess the claim 51 properties.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

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Thus, claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 should now be in condition for allowance.


Rejoinder

Withdrawn claims can be rejoined if they are species of an allowable genus claim. Withdrawn claims 14, 18, 32, 36 and 41-46 are either dependent from, or have been amended to include all of the limitations of independent claim 1. As Applicant respectfully submits that claim 1 is in allowable condition, and being that the withdrawn claims are a species of this allowable genus claim, the withdrawn claims therefore should be in condition for rejoinder, and such is respectfully requested.

In view of the above remarks, Applicant respectfully submits that the instant application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52. Applicant furthermore requests that claims 14, 18, 32, 36 and 41-46 be rejoined.

Should the Patent Office deem that any further action on the part of Applicant would be desirable, the Office is invited to telephone Applicant's undersigned representative.

Respectfully submitted,


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